

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Proceeding by the Department)	
of Telecommunications and Energy)	
on its own Motion to Implement the)	
Requirements of the Federal Communications)	D.T.E. 03-59
Commission's Triennial Review Order)	
Regarding Switching for Large Business)	
Customers Served by High-Capacity Loops)	

MOTION FOR CONFIDENTIAL TREATMENT

DSCI Corporation (“DSCI”) and InfoHighway Communications Corporation (“InfoHighway”) (collectively, the “Carriers”) request that the Department of Telecommunications and Energy (the “Department”), pursuant to G.L. c. 25, § 5D, grant this Motion to provide confidential treatment to certain data provided by the Carriers in their Joint Offer of Proof on DS-1 Switching Impairment filed on October 15, 2003 (“Joint Offer”). As demonstrated below, the data qualify as “confidential, competitively sensitive, proprietary” information under Massachusetts law and are entitled to protection from public disclosure in this proceeding.

ARGUMENT

Information filed with the Department may be protected from public disclosure pursuant to G.L. c. 25, § 5D, which provides in part that:

The [D]epartment may protect from public disclosure, trade secrets, confidential, competitively sensitive or proprietary information provided in the course of proceedings conducted pursuant to this chapter. There shall be a presumption that the information for which such protection is sought is public information and the burden shall be upon the proponent of such protection to prove the need for such

protection. Where such a need has been found to exist, the Department shall protect only so much of the information as is necessary to meet such need.

Compliance with G.L. c. 25, § 5D requirements exempts the Department from treating such confidential information as public records under state laws. See G.L. c. 66, § 10 (public records statute); G.L. c. 4, § 7, cl. Twenty-sixth(a)(protecting as non-public documents all records “specifically or by necessary implication exempted from disclosure by statute”). The Department has frequently granted motions under § 5D in telecommunications cases.¹

The Department should grant protective treatment to the “confidential, competitively sensitive or proprietary information” furnished by one or both of the Carriers in the Joint Offer for the reasons discussed herein.

DS-1 Circuits Maintained by the Carriers.

At pages 7, 8, 9 and 10 of the Joint Offer, the Carriers have provided information regarding the numbers of DS-1 circuits they each have ordered on Verizon’s UNE-P and surrogate UNE-P platforms in order to respond to Verizon’s arguments that the scope of the DS-1 UNE-P market is not of sufficient importance to justify continuation of the DTE 03-59 investigation. The precise extent of DSCI’s and InfoHighway’s DS-1 UNE-P circuits in Massachusetts is not reported publicly and is known only by each of the Carriers and Verizon (which is responsible for supporting these circuits on a wholesale basis). Public disclosure of the extent of the Carriers’ DS-1 customer bases would allow competitors, vendors and customers to better understand the Carriers’ respective

¹ E.g., Interlocutory Order, DTE 01-31 (Phase I)(August 29, 2001), p. 9; Order on Joint Petition for Approval of Settlement Agreement and Final Order, DTE 98-57 (Phase IV)(May 14, 2002), pp. 8-10.

businesses and could be used to their detriment in the competitive marketplace.² The Carriers request that this information be kept confidential for at least a three year period, at which point it will become sufficiently stale to minimize some of the adverse competitive impact from disclosure on the public record.

Customer Names and Segment Information

At pages 8 and 9 of the Joint Offer, the Carriers provide for the Department's review the names of some specific customers that would potentially be adversely affected by a decision of the Department not to proceed with the instant investigation, as requested by Verizon, as well as specific numbers of customers by particular market segment. The names of the customers of DSCI and InfoHighway and specific numbers of customers in market segments are not publicly available and are known only to the Carriers themselves, the customers themselves and the wholesale provider. Disclosure of the specific customer names and number of customers by segment would allow competitors to better understand the particular target customers of each of the Carriers and could be used to their detriment in the competitive marketplace.³ As with the information above, the Carriers request that the customer name and customer segment information be kept confidential for at least three years.

Revenue Information

For the same reasons discussed above, on pages 8 and 9 each of the Carriers provided data on the amount of revenues it has generated from DS-1 services in the

² See, e.g., Order, DPU 97-63 (1997), p. 9 (protecting from public disclosure information regarding market share and business strategy); Hearing Officer's Ruling, DPU 95-59B (1997), pp. 7-8 (competitively sensitive information should be protected in a competitive market).

³ See, e.g., Interlocutory Order, DPU 01-31 (Phase I), p. 9 (recognizing that disclosure of location-specific information may lead competitors to devote greater sales and marketing resources).

Commonwealth. This information is not publicly available, even to the wholesale provider, and disclosure would allow competitors, vendors, customers and the wholesale provider to gain insight as to the Carriers' respective businesses that could be used to their detriment in the marketplace. The Carriers request that revenue information be kept confidential for at least three years.

CONCLUSION

For the foregoing reasons, the Carriers request confidential treatment under G.L. c. 25, § 5D, of the above-described confidential information contained in the Joint Offer. If any party desires access to the confidential information described herein, the Carriers will provide the information to such party upon execution of a satisfactory confidentiality agreement.

Respectfully submitted,

DSCI AND INFOHIGHWAY
By their attorney,

Robert J. Munnelly, Jr.
Murtha Cullina LLP
99 High Street – 20th Floor
Boston, MA 02110-2320
(617) 457-4062
rmunnelly@murthalaw.com

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